

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on 3/15/91

Julie H. H.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT application of:)
April Gulbrandson KOHRT) Examiner: H. T. Vo
Serial No. 08/951,754) Art Unit No. 3747
Filed: October 16, 1997)
For: INTAKE AIR HEATER AND)
AIR DELIVERY ASSEMBLY)
FOR ENGINES)
)

Honorable Assistant Commissioner for Patents
Washington, D.C. 20231

DECLARATION OF ROBERT H. SEAT

I, ROBERT H. SEAT, declare as follows:

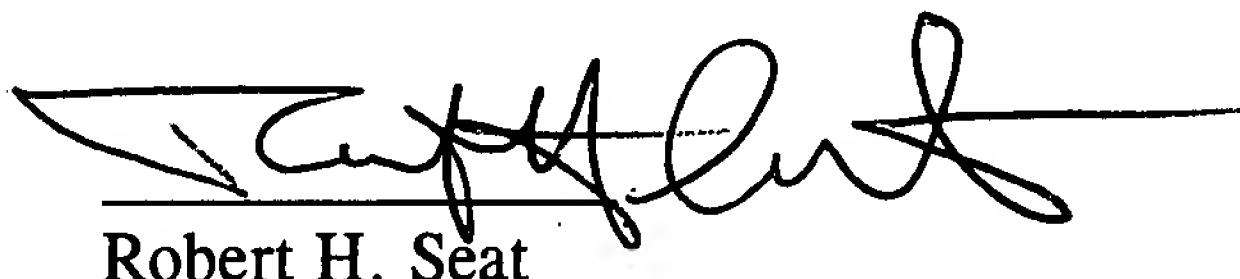
1. I have been employed by Cummins Engine Company (Cummins) from 1988 to the present which included the period covering the design, development and implementation of the subject invention.
2. From 1991 to 1997, I was the Commodity Manager at Cummins for various companies including Phillips & Temro. In that position, I was the primary focal point at Cummins for the companies to which I was responsible. I managed the contractual relationship, sourcing and concurrent engineering issues that arose between the various companies and

Cummins. In the regular course of my business practice, I also maintained copies of signed agreements that defined the business relationship between Cummins and each of the various companies.

3. Attached at Exhibit A is a true and accurate copy of a Supplemental Agreement entered into between Phillips & Temro and Cummins on November 16, 1993. Agreements like this one were kept in the regular course of business.

4. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 2/26/99



A handwritten signature in black ink, appearing to read "Robert H. Seat", is written over a horizontal line. The signature is fluid and cursive.

Robert H. Seat

R.H. SEAT

NOV 16 1993

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SUPPLEMENTAL AGREEMENT

This Supplemental Agreement is in addition to any other agreement between Cummins Engine Company, Inc. ("Cummins") and Phillips Temro, Inc. ("Phillips Temro") and is hereby incorporated by this reference into all other existing and future agreements between the parties. The obligations of this Supplemental Agreement shall apply during and after the term of and development, supply or purchase agreements between Phillips Temro and Cummins.

Phillips Temro acknowledges the valuable and confidential nature of the information which has been or will be disclosed by Cummins in working with Phillips Temro and the damage which would be incurred by Cummins if such information were disclosed or used in violation of this Supplement Agreement. Any and all information, including, but not limited to, technology, specifications, volumes, designs and processes, obtained from Cummins or its affiliates by the Phillips Temro relating to Cummins, its affiliates, and/or its products, shall be deemed strictly confidential ("Confidential Information"). Phillips Temro agrees not to disclose or publish such Confidential Information, in whole or in part, to any third party, without the prior written agreement of Cummins. The following shall not be considered Confidential Information;

- (a) information which the Phillips Temro can show from its documented records properly to have been in its possession prior to receipt from Cummins;
- (b) information which Phillips Temro can show to have been generally available to the public at the time of receipt from Cummins;
- (c) information which becomes generally available to the public subsequent to receipt from Cummins without any fault whatsoever by Phillips Temro; or
- (d) information which is developed by Phillips Temro, or its employees or agents, independently of, and without reference to, the information furnished to Phillips Temro by Cummins.

Phillips Temro agrees that it shall not manufacture, sell, market, consign or deliver, directly or indirectly, products using Confidential Information, including, but not limited to, Cummins' technology, specifications and/or designs, except to Cummins, entities affiliated with Cummins, or entities Cummins agrees in writing are permissible purchasers of the specific product.

To the extent that Phillips Temro brings to its relationship with Cummins writings, concepts, processes, discoveries, designs, inventions and/or improvements which are conceived, discovered and/or developed solely by Phillips Temro, its employees, and/or its subcontractors, then such property shall remain the property of the Phillips Temro and shall not be used, disclosed, or exploited by Cummins. To the extent that Cummins brings to its relationship with Phillips Temro, writings, concepts, processes, discoveries, designs, inventions and/or improvements which are conceived, discovered and/or developed solely by Cummins, its employees, and/or its subcontractors, then such property shall remain the property of the Cummins and shall not be used, disclosed, or exploited by Phillips Temro.

Each party agrees that all writings, concepts, processes, discoveries, designs, inventions and/or improvements conceived, discovered or made solely by either party or its employees or subcontractors in the course of the work done under this Supplemental Agreement shall belong to the party which conceived, discovered or developed such property; however, to the extent concepts, processes, discoveries, designs, inventions and/or improvements conceived, discovered or developed are made jointly by Cummins and Phillips Temro, or by their employees or subcontractors in the course of the work done under any agreement between the parties, then such property shall be jointly owned by Cummins and Phillips Temro and each party shall be free to treat such property as it would its own proprietary and confidential property without limitation on the other party.

In the event of a dispute between the parties rising out of or relating to this Supplemental Agreement, the parties agree that a meeting shall be held promptly between the parties to attempt in good faith to negotiate a resolution of such dispute. If within 30 days after such meeting the parties do not succeed in negotiating a resolution, the parties shall submit the dispute to mediation in a forum and under terms that are agreeable to both parties. If the parties cannot agree to the terms under which to mediate the dispute, or the mediation does not result in a resolution of the dispute, each party may then pursue all other available remedies.

At any time, each party is entitled to seek and obtain an injunction to enforce the terms of this Supplemental Agreement. Phillips Temro acknowledges that if it breaches this Supplemental Agreement Cummins shall suffer irremediable damage with no adequate remedy at law. Additionally, Cummins may, without prejudice to any other lawful remedies, immediately cancel all supply, development and/or purchase agreements between Cummins and Phillips Temro without notice and without penalty to Cummins, if Phillips Temro has violated any material provision of this Supplemental Agreement. Further, the parties acknowledge that any remedy at law would be inadequate and it would be impractical and extremely difficult to determine the actual damage resulting to Cummins if Phillips Temro breaches this Supplemental Agreement. Accordingly, Phillips Temro shall pay to Cummins as liquidated damages for each and every material breach of this agreement all the compensation obtained by Phillips Temro for each and every violation of this Supplemental Agreement.

Phillips Temro, Inc.

Bob Walker 5/10/93
By: (Supplier's Representative's Name)